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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,659	09/15/2003	John Buiatti		1866

26387 7590 02/08/2007  
ROTH & GOLDMAN, P.A.  
523 W. 6TH STREET  
SUITE 707  
LOS ANGELES, CA 90014

EXAMINER
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HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/662,659

Applicant(s)

BUIATTI, JOHN

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7-11,16,17,19,20 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 11, 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 7-11, 16, 17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Beer et al (U.S. Patent No. 4,799,922).

Art Unit: 3761

With respect to **claim 1**: Beer teaches a nursing aid system comprising: a breast cup 11 having a concave breast receiving portion 111, said cup 11 having a hollow generally cylindrical nipple receiving portion 112 located on and projecting away from said concave portion 111. (Figs. 1A-C, Col. 5, lines 29-35) The nipple-receiving portion 112 is capable of being grasped by the mouth of an infant when a pump 10 is not connected using connection 113, thus satisfying the relevant limitation in claim 1, as the phrase "for grasping by the mouth of an infant" constitutes functional language that is given little patentable weight herein. The nipple-receiving portion 112 has an end remote from said concave portion (Fig. 1B) and a milk delivery aperture at said end. (Fig. 1B, Col. 5, lines 29-35) The nipple-receiving portion 112 also has a nipple extender 147 (part of insert 14) that is axially slidably receivable in said nipple receiving portion 112 (Col. 6, lines 16-19), said nipple extender 147 having an axial length less than an axial length of said nipple-receiving portion 112 (as can be seen in Fig. 1B), said extender 147 being sized and configured to occupy space in said nipple receiving portion 112 not occupied by a mother's nipple (as can also be seen in Fig. 1B), said extender 147 having a flow channel 19 for conducting milk in said nipple receiving portion 112 from a mother's nipple to said milk delivery aperture.

With respect to **claim 7**: The breast cup, specifically insert 14, is formed of flexible elastomeric material. (Col. 6, lines 3-5)

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3761

Claims 8, 9 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer et al (U.S. Patent No. 4,799,922) in view of Han (U.S. Patent No. 6,213,840).

With respect to **claim 8**: Beer teaches a milk delivery aperture in the form of passages 19 forming holes in end wall 144, but does not teach that said milk delivery aperture comprises slit means extending through said end of said nipple-receiving portion to provide a normally closed milk delivery aperture. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Since the devices of Beer and Han seek to solve a similar problem in the art (i.e. provide a portable breast pumping device), it would be obvious to one of ordinary skill in the art to modify the device of Beer to have a milk delivery aperture that comprises a slit means to provide a normally closed aperture as taught by Han.

With respect to **claim 9**: Han teaches that these slits may be horizontal and/or vertical or any shape that accommodates said funnel, which includes crossed slits that are horizontal and vertical. ('840, Col. 2, lines 43-50)

With respect to **claim 19**: Beer teaches a nursing aid system comprising: a breast cup 11 having a concave breast receiving portion 111, said cup 11 having a hollow generally cylindrical nipple receiving portion 112 capable of being grasped by the mouth of an infant, thus satisfying the relevant limitation in claim 1, as the phrase "for grasping by the mouth of an infant" constitutes functional language that is given little patentable weight herein. Nipple receiving portion 112 is located on and projects away from said concave portion 111, said nipple receiving portion 112 having an end remote from said concave portion; and a nipple extender 147 slidably

Art Unit: 3761

received in and engaging said nipple receiving portion 112, said extender 147 having an axial length less than an axial length of said nipple receiving portion 112, said extender 147 providing a flow channel 19 for conducting milk from a mother's nipple in said nipple receiving portion 112 to a milk delivery aperture comprised of holes formed by channels 19 in end wall 144 of portion 112.

Beer does not teach a normally closed milk delivery aperture at said end. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Since the devices of Beer and Han seek to solve a similar problem in the art (i.e. provide a portable breast pumping device), it would be obvious to one of ordinary skill in the art to modify the device of the combined teaching of Larsson and Beer to have a milk delivery aperture that comprises a slit means as taught by Han to provide a normally closed aperture.

With respect to **claim 20**: The extender 147 taught by Beer is sized and configured to occupy most of the space in said nipple receiving portion not occupied by a mother's nipple. ('922, Fig. 1B)

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al (U.S. Patent Application Publication No. 2002/0062103) in view of Beer et al (U.S. Patent No. 4,799,922).

With respect to **claim 10**: Larsson teaches a nursing system comprising: a series of breast cups 1 each having a concave portion (hood portion) for receiving a female human breast, said cups 1 each having a hollow generally cylindrical nipple receiving portion 5. The nipple-receiving

Art Unit: 3761

portion 5 taught by Larsson is capable of being grasped by the mouth of an infant, thus satisfying the relevant limitation in claim 1, as the phrase "for grasping by the mouth of an infant" constitutes functional language that is given little patentable weight herein. The nipple receiving portion 5 is located on and projecting away from said concave portion, said nipple receiving portions 5 of said series of cups 1 are of different lengths and each portion has a milk delivery aperture in an end remote from said concave portion. A series of generally cylindrical nipple extenders are each receivable in said nipple receiving portions 5. The extenders are each differently sized to occupy substantially all space in said nipple receiving portions 5 not occupied by a human nipple, as Larsson teaches that the lengths of nipple receiving portions 5 vary. Tubular shaped extension 17 functions as a channel for milk expressed from the breast to be delivered to the milk receptacle. ('103, ¶¶ 0001, 0021, 0027)

Larsson does not teach that the axial lengths of said extenders are less than an axial length of said nipple receiving portions 5. Beer teaches a nursing system having a nipple-receiving portion 112 that in turn has a nipple extender 147 (part of insert 14) that is axially slidably receivable in said nipple receiving portion 112 (Col. 6, lines 16-19), said nipple extender 147 having an axial length less than an axial length of said nipple-receiving portion 112 (as can be seen in Fig. 1B), said extender 147 being sized and configured to occupy space in said nipple receiving portion 112 not occupied by a mother's nipple (as can also be seen in Fig. 1B). Beer teaches that such remaining space in portion 112 facilitates a temporary reduction in, and control of, ambient pressure against the user's nipple ('922, Col. 5, lines 41-47), thus it would be obvious to one of ordinary skill in the art to modify the device of Larsson so as to have nipple extenders whose axial lengths are less than the nipple-receiving portions they engage as taught by Beer to facilitate reduction and control of ambient pressure in the void space (excess volume) of portion 112 beyond the end of the extender.

With respect to **claim 11**: Beer teaches a breast cup 11, specifically insert 14, that is formed of flexible elastomeric material. ('922, Col. 6, lines 3-5)

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al (U.S. Patent Application Publication No. 2002/0062103) in view of Beer et al (U.S. Patent No. 4,799,922) as applied to claims 10 and 11 above, and further in view of Han (U.S. Patent No. 6,213,840).

With respect to **claim 16**: The combined teaching of Larsson and Beer does not teach milk delivery apertures comprising slit means extending through said ends of said nipple receiving portions to provide normally closed milk delivery apertures. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Since the devices of Beer and Han seek to solve a similar problem in the art (i.e. provide a portable breast pumping device), it would be obvious to one of ordinary skill in the art to modify the device of the combined teaching of Larsson and Beer to have a milk delivery aperture that comprises a slit means as taught by Han to provide a normally closed aperture.

With respect to **claim 17**: Han teaches that these slits may be horizontal and/or vertical or any shape that accommodates said funnel, which includes crossed slits that are horizontal and vertical. ('840, Col. 2, lines 43-50)

***Allowable Subject Matter***



Claims 3-5 and 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

February 1, 2007

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**

